

ID: CCA\_2009061710212435

Number: **200930044**

Release Date: 7/24/2009

Office:

UILC: 6672.00-00

---

**From:**

**Sent:** Wednesday, June 17, 2009 10:21:28 AM

**To:**

**Cc:**

**Subject:** Withdrawn protests and 6672(b)(3)

Good morning,

In response to your recent inquiry, our conclusions on matters within 's  
Jurisdiction based on the information you have provided are set forth below.

Section 6672(b)(3)(B) provides that where the responsible person files a timely protest in response to a timely mailed 60-Day Notice of Proposed Assessment, the assessment limitations period will not expire before "the date 30 days after the Secretary makes a final administrative determination with respect to such protest." In order for this section to apply, two factors must be present: the responsible person must file a timely protest and, the Service must make a "final administrative determination" regarding that protest. While neither one of these terms are defined in the statute, the applicable procedures define a timely protest as one received by the Service "within 60 days" from the date of the Letter 1153(DO). Rev. Proc. 84-78; IRM 5638.73; IRM 563(11).6. Likewise, the decision to either concede or sustain all or part of the proposed penalty by the Appeals function constitutes a "final administrative determination" under the current IRM procedures. IRM 8(11)42; IRM 5638.73.

Appeals is presently the only function that can make the "final administrative determination" with respect to a proposed TFRP. A withdrawal of a timely protest by a responsible person should be construed to constitute a "final administrative determination" for purposes of section 6672(b)(3)(B). Otherwise, a responsible person would be able to completely escape responsibility under section 6672 by filing a timely appeal, and then, once the statute of limitations on assessment has run, withdrawing the appeal. (IRM 5.7.6.1.8) See 1997 WL 33104743 (IRS LB), Internal Revenue Service Litigation Bulletin, October 1997, General Litigation Bulletin, Office of Chief Counsel, Bulletin 445.

Under IRM 5.7.6.1.8., the section mentioned in the original inquiry, a quick assessment should not be made until after the appeals determination. IRM 5.7.6.4(4) states that quick and prompt assessment methods may be made only after the taxpayer takes one of the following actions: (1) signs Form 2751; (2) Fails to respond to the Letter 1153(DO) within the appropriate time period; or (3) Completes the appeals process. If a

taxpayer withdraws their protest, they are ending the appeals process and the quick assessment can occur.

Currently, 8.25.1.2.1(6) states that when a taxpayer withdraws a timely protest, Appeals will sustain the proposed liability in its entirety. The date the Appeals Team Manager signs the customized Form 5402 sustaining the liability constitutes the “final administrative determination” for purposes of IRC 6672(b)(3)(B).

We conclude that if the taxpayer withdraws his protest, Appeals should sustain the proposed liability in its entirety. The date the Appeals Team Manager signs the customized Form 5402 sustaining the liability constitutes the “final administrative determination” for purposes of IRC 6672(b)(3)(B). The quick assessment should be made within 30 days after this final administrative determination is made.